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ABSTRACT

A quick reading of Franklyn Haiman's writings on ethics and free speech would suggest many disparities in his early conception of the ethical communicator and in his conception of free speech and the activity it allows in a democracy. In the material on ethics, Haiman addresses the ideal of how people ought to communicate with others in an ethical way in a democratic society. In the work on free speech, he focuses upon the role that the state should play in regulating the communication activity within a democracy. Haiman argues, for example, that the state should act not to prevent speech but to protect speech. He further suggests that the state should act essentially to protect all speech, not just ethical speech. The congruency of these two views can be exemplified in thinking of the key virtues that ought to animate citizens in the democracy as they go about their roles as active participants in the polis. Haiman calls for the citizen communicator to be a person of great practical wisdom who uses the intellect to develop a habitual pattern of behavior in which communication activities are guided by the robust virtues of proper pride, rational decision making and action, and tolerance. (HOD)

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An Analysis of the Ethical Groundwork of Franklyn Haiman's Speech and Law in a Free Society

Kenneth E. Andersen

Franklyn Haiman's Speech and Law in a Free Society was perceived as a major contribution to our discipline immediately upon publication. He received both the Speech Communication Association's Golden Anniversary Fund Award and the James A. Winans-Herbert A. Wichelms Award for Distinguished Scholarship at the November, 1982, SCA Louisville Convention. But one should not think of Mr. Haiman as "an overnight success." Indeed, in some senses his entire career had brought him to the purpose of this book:

> "to explore some of the most troublesome problems involving freedom of speech, attempting to bring to bear upon them a more careful analysis than has commonly been applied in the past, and to evolve more consistent, predictable, and principled criteria for dealing with particular cases. Greater clarity, coherence, and service to our ultimate goals, as we confront free speech controversies will be the aim of this endeavor."[1]

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SOURCES

The purpose of this article is to explore the ethical groundwork employed in Speech and Law in a Free Society. This writer seeks to identify the ethical stances that animate the text and whose identification can be used to illumine the text and to draw upon Haiman's previous exposition of ethical issues to explore ways in which his previous positions are utilized or modified in the current statement of his philosophy of free speech. Such examination may argue for this writer's view that the resolution of free speech issues by a society or community is inevitably based on the resolution of certain ethical issues that confront individuals and societies as they come to grips with free speech issues either in individual choices, in societal customs, or in law.

Haiman's writings suggest an interesting evolution. His early published work was often empirical in nature and his first published book was in the area of small groups.[2] Early articles include work on group leadership, emphasizing the "democratic style,"[3] and the measurement of authoritarian attitudes vs. open-mindedness.[4] His interest in ethics may be discerned in some of his dissertation work on ethos.[5] Aspects of ethos such as source prestige and non-verbal cues are concerns in three later articles which addressed ethical issues in persuasion and increasingly linked those considerations to free speech issues.[6] His work in free speech includes three separate books of which Speech and Law is the last. The first two books were more overtly designed for use in the undergraduate classroom.

Franklyn Haiman has been active for many years in the American Civil Liberties Union. He was, for example, a Chair of the Illinois Division of the ACLU. He has been involved in actual court cases concerned with freedom of speech issues. One cited by Haiman is an Illinois Supreme Court case (Haiman v. Morris, No. 37276).[7] Haiman frequently acknowledges the influence of ACLU people and activities on his thinking.

Before examining Speech and Law in terms of ethical groundwork and changes, if any, in ethical views related to free speech issues, it will be helpful to summarize briefly the three journal articles which overtly addressed ethical issues in communication.

"A Re-Examination of the Ethics of Persuasion" asserts that no one questions the ethicality of influence through reasoned discourse nor reasonable efforts to hold attention and make ideas understandable or to obtain an open-minded hearing. Haiman does criticize the "entire gamut of devices recommended by textbooks for rendering an audience or listener suggestible." These include the omission of contrary arguments or evidence and ethical or emotional appeals "designed to short-circuit the listener's critical thinking process."(p. 4)[8] Haiman is concerned with the purposeful use--consciously intended use by the source--of means that short-circuit the critical process. He holds the listener responsible for impact of prestige, speaker appearance, and other psychological devices unless "the speaker deliberately capitalizes on these assets in order to

win uncritical acceptance."[9] Haiman notes that many motive appeals can be used in rational ways. He argues we need to teach about these techniques of persuasion "to protect ourselves against them."[1] Invoking academic freedom, he notes the responsibility of the student "to learn about alternative methods of behavior in order to make his own choices intelligently."(p. 7) His analysis concludes by arguing for the "democratic ethic," "the only value I know which is legally and morally binding on all who choose to live in our culture."(p.7)

Haiman attempts to define that ethic. In the democratic ethic one does not threaten a person with a gun or loss of a job to persuade. Rather, it provides for "free choice," a choice not determined through psychological domination by another. "If the speaker can do it (influence the opinions and acts of others) through rational means which by their very nature are respectful of the psychological integrity of the listener and can be successful only if the listener accepts them in full awareness of what he is doing, . . ." the speaker has fulfilled the mandate of the democratic ethic.(p. 8) Haiman then bridges into a free speech issue. Should we outlaw use of these psychological processes just as we outlaw force?" He answers no on the prudential ground that we cannot yet determine when such psychological coercion exists. Further, the desired approach is to set those who are dominated free, to help such people learn what is happening to them and teach them methods of self defense.(p. 8-9) Haiman stresses that the use of intentional methods of psychological domination always remains unethical by democratic standards. They are autocratic acts, even if sometimes necessary and justified by the ends sought. Using such means requires

that the end be sufficiently justified as mandating these means (one could assume a requirement that the end is not achievable by democratic means) "with the clear realization that the activity cannot be justified by democratic ethics."(p. 9)

Similar concerns with psychological manipulation characterize Haiman's 1958 article on "Democratic Ethics and the Hidden Persuaders." Whatever the technique used, "subliminal cues, mass hypnosis, constant repetition, loaded language, the subtle use of social pressures, or the appeal to irrelevant loves, hates, and fears," the common denominator of the hidden persuader's techniques is the attempt to make a person believe or act in a certain way "by short-circuiting his conscious thought processes and planting suggestions or exerting pressures on the periphery of his consciousness which are intended to produce automatic, non-reflective behavior."(p. 385) Noting the dilemma posed in that many object to these techniques only when used by those who seek ends contrary to those affirmed by the individual, Haiman argues that such techniques cannot be seen as amoral. For "a democratic society is built (on) the principle that the end does not justify the means. . . . democracy is based upon the dignity of the individual human being."(p.387) Haiman strikes a note of Aristotelian ethics in the view that a person "must be" constantly developing his potentialities. And a key capacity is the ability to choose freely, aware of what he is doing.(p. 388) Haiman recognizes "that consciousness, and the freedom of choice which it makes possible, is a matter of degree."(p. 389) Haiman again tries for a sense of balance: he allows for audience adaptation since it may be an effort to "avoid uncritical rejection."(p. 389) And he is

less concerned about the selling of soap and cereal than about the spread of these techniques to become "the all-pervading mode of appeal in a society--the rule rather than the exception. . . ."(p. 390) Haiman advises the persuader that in the long run the most effective method is to make an individual conscious of his "motives and to show him, clearly and rationally, how he can best fulfill them."(p. 391) Haiman believes that the user of non-ethical persuasion takes on in his own character the pattern of his acts (again an Aristotlelian notion of virtue being a habit built up over time through practice) and that deeply held, sincere beliefs are not sufficient to escape condemnation for unethical activity.(pp. 391-392) He concludes by calling upon listeners to accept an obligation to aid in preserving their own dignity. This means "teaching listeners to become more sensitive to the techniques of psychological manipulation so that they can protect themselves at least from those that are not completely subliminal."(p. 392) Haiman concludes by expressing the need for us to learn more about how to promote the autonomy and uniqueness of the individual.

"The Rhetoric of the Streets: Some Legal and Ethical Considerations" provides a more complicated analysis of the issues and to some degree less clear-cut dicta about what constitutes ethical behavior. Haiman begins with the frequent criticisms leveled against many of the groups agitating on civil rights issues and the Vietnam War through demonstrations, passive disobedience, sit-ins, etc.; criticism even by those who favor the reforms sought. Haiman takes up three specific free speech issues from both legal and ethical contexts: the concern that such activity produces a climate of anarchy from which no one can gain; that an orderly society needs to provide for prescribed and proscribed

times, places, and manners for protest, and raising issues of privacy, interference with the rights of orders, and undue demands on community resources to cope with demonstrations; and, finally, that the "new rhetoric exceeds the bounds of rational discourse."(pp. 100-102) Indeed, Haiman resurrects an image used in his Central States article in comparing the new "body rhetoric" to the "holding of a gun at the head,." (p. 102) and the issue of the resort to emotional appeals that are designed to arouse signal responses.(p. 103)

Haiman proceeds to offer a defense of both legal and ethical bases for much of the disputed activity. He expands the notion of speech to include almost the entire range of protest activity excluding violence and assassination. He notes civil disobedience has a long tradition in which those who violate the law willingly pay the penalty and that even the courts often find that violation of unconstitutional laws is not to be punished. But his focus is more on the "uncivil disobedience, the "rhetoric of the riot."(p. 105) He argues the possibility that channels for peaceful protest and reform may be so clogged they are or appear to be "inaccessible to some segments of the population."(p. 105) Further, regulation of time and place is often not even-handed. We endorse Fourth of July parades and many other interferences of greater consequence than those brought upon us by the activity of the protesters.(p. 105-106) Some violation of our privacy and our freedom of movement may be the price we need to pay to insure that messages of minority groups and others are not screened out of the consciousness of those addressed. (I would note this approach takes the notion of the end justifying the means to a degree not found in earlier writings. The emphasis has moved to protection of free speech with less

emphasis on ethical activity.) Haiman would protect the rights of the dissenters to do anything legal to the extent of "if necessary, calling out the National Guard." Any other course of action is "to issue an invitation to hostile audiences to veto the right of dissent."(p. 108) With regard to legal but unwelcome protest Haiman places the responsibilty upon the audience, for it is the "audience" who turns a legal protest into a riot, physical confrontation, or other dangerous activity. Here Haiman takes the responsibility of the listener to protect himself from manipulation to a new frame in which the listener must exercise restraint and not respond to things that provoke him or her. Haiman does this by taking a view of protection of activity in the name of freedom of speech that even the courts are not willing to grant in some instances. Haiman finds "the logic of this (nothing coercive about one dissenter or a thousand parading or singing) . . . so compelling that it is difficult to understand why it is so seldom perceived."(p. 112) Haiman agrees than many of the techniques fall short of rational discourse but that does not mean they are illegal. Further, he can defend these activities as ethical "in that the norms of the democratic process may be inapplicable to the situations in which these strategies are employed."(p. 114) Noting that evaluations differ with different points of view, he suggests that "perhaps the best one can do is to avoid the blithe presumption that the channels of rational communication are open to any and all who wish them and attempt . . . a careful assessment of the power structure of situation."(p. 114) He calls for an effort to make the opportunities for the standards of ideal public discourse available to all.

Speech and Law in a Free Society differs significantly from Haiman's two previous books concerned with freedom of speech. They were clearly designed as textbooks; this latest work is more a meditation on the principles that should determine the laws which regulate speech while also being a discourse on the responsible use of speech in a democratic (in some sense, any,) society.[11]

Speech and Law begins with two chapters that lay out the "Contours of the Problem," as Chapter I is entitled. The Chapter lays out certain conceptions that Haiman utilizes as a basis for the analysis in the remainder of the book. Chapter II is an extensive discussion of the proper definition of the concept of "speech" as employed in the First Amendment. Arguing that "all behavior is capable of being understood as communication,"(p. 31) he divides human behavior into three broad categories. The first is entirely symbolic, "it functions only to create meanings";(p. 31) the second is behavior engaged in for its own sake, carrying out some human need or impulse "irrespective of any possible effect upon an audience";(p. 32) the third is "conduct that is ordinarily intended or perceived as symbolic . . . but may be endowed by the actor, perceiver, or observer with meaning above and beyond the act itself. The behavior is made symbolic by the way in which it functions."(p. 33) Haiman sees this third category as problematic: one must determine whether actions in this category fall within the protection of the First Amendment by taking a kind of test drawn from ordinary moral intuitions, namely "whether the behavior does harm to others and, if so, to how serious a degree."(p. 35) Murder is clearly excluded, acts

of civil disobedience are less extreme, and the wearing of a black armband or a style of hair is clearly to the other side of the continuum from murder. For those actions in the middle of the continuum we must weigh the amount of harm done to other people, the value of competing interests, and the symbolic functions that may be served. Haiman invokes both ordinary moral intuitions and practices and the notion of balancing competing interests and values in a jurisprudential model.(pp. 35-36) He does not argue the First Amendment to be absolute, rather that all circumstances must be weighed, for there is no hierarchical order to the Bill of Rights.

Having established the framework, Haiman proceeds to examine a great many issues in freedom of speech ranging from government regulation of speech, commercial speech, libel, invasion of privacy, intimidation, incitement to illegal action, to government as a communicator. He concludes those 15 chapters with a summation in which he draws forth four major principles that emerge from the discussion and analysis.

Haiman draws extensively upon legal cases at state and federal court levels as well as the writings of many free-speech theorists. He proceeds much as Aristotle argues that one should proceed in his defense of the methodology of the Nicamachean Ethics, to examine the various opinions and point of view, analyze them critically, and then draw out the tenable conclusions. It would be interesting to engage in a dialogue with Haiman about the multiplicity of arguments and analyses involved. (I have not found such a treasure trove for argumentation students since John Rawls' A Theory of Justice.)[12] However, some method of limiting the analysis is essential. Therefore, the remainder of the paper will focus first upon what Haiman takes to be the interaction between

human nature and the society and the principles enunciated to guide the interplay of speech and law in a free society. These will be examined in terms of the ethical stances implicit or potential in those principles and in terms of the principles enunciated by Haiman in the three articles summarized earlier where the greater emphasis was on ethics althougn the focus shifted increasingly to free speech issues.

Human Nature and the Society

Haiman believes that many of the differing views about freedom of speech arise out of "the lack of consensus in our society concerning the basic purposes and values underlying the First Amendment. Some of our deepest political and philosophical differences are implicated in these questions."(p. 5) One set of questions he sees as arising from the general acceptance of the view that liberty is a good and freedom of discussion is the best means of seeking the truth, coupled with a host of reservations about whether all can handle such liberty and such discussion. In Rawls' terms, are the rights and privileges and the duties and responsibilities of liberty and such truth seeking to be equally shared by all in theory or possible in actual practice? Similar concerns may be raised about allied issues of free will and acceptance of responsibility.

Haiman offers his views in six responses which may be briefly summarized:

1. "Social order is a means to maximizing individual liberty and security. It is not an end in itself. The self-expression and self-fulfillment of the individuals who compose a society are ends in themselves."(p. 6)

2. "Symbolic behavior is one of the most fundamental ways in which human beings express themselves." Law "is not an appropriate mechanism for the prohibition of words and deeds which do no injury to other persons."(p. 6)
3. "The human condition is not predetermined." "Individuals . . . (within the limits of capacities and the possible) are capable of free choice and are responsible for the behavior which they choose."(pp.6-7)
4. Despite human variations, "every informed person is ultimately the best judge of his or her own interests." And even if not the case, how could we decide who would be the best judge?(p. 7)
5. "Intellectual and emotional maturity are not exclusively and not often even primarily, a product of chronological age."(p. 7)
6. ". . . a democracy presumes that we can never be certain that it (absolute truth) has been attained by any fallible human being."(p. 7)

Principles Determining the Interaction of Speech and the Law

"Four basic principles have emerged from this study:

I. Unless the harm done by an act of communication is direct, immediate, irreparable, and of a serious material nature, the remedy in a free society should be more speech. The law is an inappropriate tool for dealing with expression which produces mental distress or whose targets are the beliefs and values of an audience.

II. Unless deprived of free choice by deception, physical coercion, or an impairment of normal capacities, individuals in a free society are

responsible for their own behavior. They are not objects which can be triggered into action by symbolic stimuli but human beings who decide how they will respond to the communication they see and hear.

III. So long as there is a free marketplace of ideas, where the widest possible range of information and alternatives is available, individuals will be the best judges of their own interests. The law is properly used to enrich and expand that communications marketplace and to insure that it remains an open system.

IV. Government in a free society is the servant of the people and its powers should not be used to inhibit, distort, or dominate public discourse. There must be compelling justification whenever the government requires unwilling communication of its people or withholds information in its possession from them."(p. 425-426)

ANALYSIS

It is possible to argue the case that there has been a massive shift in Haiman's ethical standards for the conduct of communication. In "A Re-Examination of the Ethics of Persuasion" and in "Democratic Ethics and the Hidden Persuaders" Haiman roundly comdemns use of any of the techniques of name-calling, ethical or emotional appeals intended to operate in ways other than to enhance logical choices. A "democratic ethic" is invoked in which such techniques are unethical. While the listener is held to be responsible for responding to psychological suggestion when not used intentionally by the source, the onus lies heavily upon the source. Of course, one must educate the listener for self-protection but the emphasis falls upon the source.

Contrast the emphases in Speech and Law. The source may name call, the source may libel, the source may do all manner of symbolic acts that affront or inflame the auditors' emotions. The source may present the "worst of porngraphy." The solution is for the listener to respond with more speech. In the face of fighting words, ethnic slurs, racial insults, the listener is to forbear: not throw punches, not turn a parade or sit-in into some sort of violence. The listener is not to reply in kind or to prevent the communication activity that is offensive. The prospective listener can refuse to be an audience member. But, more often, she or he should wait one's turn to respond with speech or perhaps respond to the Nazi march through the Jewish neighborhood with a silent vigil while holding up pictures of the holocaust and the Nazi death camp atrocities.

A key reconciliation of the apparent conflict is to take account of the difference in the concerns. In the articles on ethics, Haiman is addressing the relationship between speaker and listener without regard essentially to the regulation of the communication by the larger society, at least any legal regulation, although there is recourse to the implicit standards of ethics which should characterize a democratic society. In Speech and Law Haiman is focusing upon the issue of legal requirements, of those elements of normative culture written into the laws of the polis, the community, and used to regulate behavior in the name of the community.

A reconciliation of the two points of view is possible only if one takes into account the difference in the subjects addressed. One is an ideal relationship between two communicators, the other is an ideal relationship of the state acting through laws and enforcement of those laws to the communication

activity of individuals. In the third article, "The Rhetoric of the Streets" written some 15 years after the "Re-Examination," Haiman moved from a focus upon the re.ationship of communicators to a concern about the relationship in terms of a rather special kind of rhetorical problem and considerations of free speech. In the first two articles (in a chronological sense) Haiman is talking about a kind of rhetoric in which the implicit model is the shared but unstated goal of two individuals seeking the best decision. There is no clear effort to exclude conflict in some senses, indeed Haiman talks explicitly about the need to use audience adaptation if it functions to obtain a fair hearing and he notes that motivational devices can be used to gain attention. He may be read to suggest implicitly that such devices are often needed to motivate reasoning efforts. There is not the sense of polarized oppostition and head-to-head conflict that characterizes the third article.

Speech and Law takes as its concern the regulation of discourse by a community through its laws. The early ethics articles take as their concerns the regulation of discourse through ethical norms that are or should be shared through the community. Speech and Law focuses largely upon legal limits to be imposed upon the source and the listener rather than the limits the source should impose upon the self. The early articles speak minimally about the resonsibility of the receivers in the communication activity; Speech and Law focuses upon the many responsibilities of listeners to accept and protect many excesses in communication. Also, Speech and Law is concerned with institutional communicators, particularly media, often seen as an agent of the receiver, and the government as an entity, largely seen as a source although by implication treated as a receiver for some of the communication directed to it as an agent of the people.

So the differences may upon analysis be seen as matters of emphasis, of concern with different roles and different functions. A reconciliation of the treatments that emphasize ethical issues and those that emphasize free speech issues may be accomplished through postulating the ethical nature of the individual member of the society that is required in the various treatments. Can we find an individual whose character, whose virtues, would be consistent with both emphases? One proof of the compatability of the various materials would be to postulate an individual possessing a coherent set of virtues requisite for attainment of Haiman's conception of what ought to be in the world of action, both individual ethical action and in regulatory actions by the society through and within the law.

The list of virtues which follows attempts to describe the character of the individual who would be the archetype of the communicator essential to realizing an optimum communication activity in Haiman's view. There is some hierarchical sense to the ordering which follows but the specifics of a situation can make any one virtue dominant. The list of virtues is designed to take into account all communication roles which an individual may play, source, receiver, member of the society in which the communication takes place. The virtues are seen in terms of the model of Aristotle in the Nicamachean Virtues: a virtue is a habit established over a long period of time in which a person makes the right response to the right degree in the right circumstances with that response being a mean which lies between two extremes--one an excess of the particular characteristic, one a deficiency. It is a response endorsed by a person with great and practical wisdom. Further, the virtue of any act is particular to an individual, tied to the specifics of that individual's capacities, responsibilities, background, etc.[13]

In one sense, the most important virtue as I interpret Haiman's system is the virtue of proper pride. The final paragraph in Speech and Law opens with the statement: "All of these principles require a strong and vigilant citizenry for their faithful implementation. The regime which they envision is not one for the squeamish or apathetic. It is not for those who lack the courage of their convictions."(p. 429) There is here that same emphasis on the role which the citizen must accept as part of the fact of being a citizen of a democracy that appears in the stress on the "democratic ethic" of earlier articles. Haiman's conception of the democratic ethic has evolved to a powerful conception of the acceptance of responsibility, of courageous willingness to respond and to act in one's role of a citizen that exemplifies Aristotle's notion of proper pride. Perhaps the virtue is more fully described as "the virtue of the proper pride characterizing the citizen of a democracy." A person who does not accept responsibility commensurate with that which he ought to assume is not exhibiting the virtue. Such a formulation in the Aristotelian mode allows us to take cognizance of the limitations of a child or particular circumstances where a apparent departure from the norm is acceptable within the requirement of the virtue.

A second essential virtue is that of rationality. In his work on ethics Haiman stresses the responsibility of sources to utilize rational means of persuasion. Psychological techniques are permitted only to the degree they enhance and make possible rational decision making. The listener has the responsibility not to allow psychological factors to influence judgements and should be alerted to these possibilities and taught means of self defense. There is commitment to full disclosure and of maximum availability of

information. In Speech and Law the emphasis becomes one of maximizing the range and variety of ideas available, including markedly unpopular ideas, through ensuring that government does not censor discourse and through preventing individuals and groups from doing so as well. It is the responsibility of all to treat symbolic activity in rational ways even though the presentations may be highly charged and in very contentious circumstances.

A third and closely associated virtue is that of tolerance. The individual must tolerate a wide range of opposing viewpoints and activities. The individual must not respond to fighting words, to libelous material, to protesters who vehemently and perhaps unfairly oppose one's own commitments. The toleration must extend to making available times and places, even at taxpayer's expense, to all competing interests. Haiman would provide police protection for those with unpopular ideas to make their presentation and ask the police to restrain those who would object. One is not allowed to shout down the opposition, one must listen to them and wait one's turn. One can, of course, cease to be an audience but one must not prevent others from having the chance to hear what is being said.

The virtue of tolerance does not mean toleration of action that is illegal. Haiman would protect almost any kind of symbolic act imaginable unless there are counterbalancing factors that outweigh that commitment. This does not mean that one must tolerate illegal acts by people who "blow up" abortion clinics no matter how sincere they might be. This is unethical and, of course, illegal as well. It should be seen as terrorism and not as civil disobedience. But much that is patently unethical should not be illegal. Toleration is essential for

the intolerant will not be able to practice the rational decision making needed in the society and demanded by the dignity we have as humans.

The three virtues are identified for emphasis. But in one sense, Haiman is arguing for the concept of Aristotle's practical wisdom being applied in all areas of our life to maximize our capacity of being a flourishing human being, developing our moral capacities.

SUMMARY

A quick reading of Franklyn Haiman's writings on ethics and free speech would suggest many disparities in the conception of the ethical communicator as Haiman takes that person to be in earlier writings on ethics and the activity to be allowed, indeed to be protected by law, in a democracy in terms of his conception of free speech. The apparent conflicts are reconcilable if one notes differences in focus. In the material on ethics Haiman is addressing the ideal of how a person ought to communicate to other persons in an ethical way in a democratic society. In the work on free speech he is focusing upon the role which the state should play in regulating the communication activity within a democracy. The state should act not to prevent speech but to protect speech. And the state should act essentially to protect all speech, not just that which is ethical. Indeed, many of our current laws should be reversed as they intrude beyond what is necessary in regulating speech. The congruency of these two views can be exemplified in thinking of the key virtues that ought to animate the citizen in the democracy as he goes about his role as an active participant in the polis.

Haiman calls for the citizen communicator to be a person of great practical wisdom. This person uses the intellect to develop a habitual pattern of behavior in which the communication activities of a citizen in a democracy are characterized by guidance of the robust virtues of proper pride, rational decision making and action, and tolerance.

ENDNOTES

Kenneth E. Andersen is Professor of Speech Communication and Associate Dean of the College of Liberal Arts and Sciences at the University of Illinois at Urbana-Champaign. This paper grows out of his interest in the relationship of ethics and free speech derived from teaching a course which combines the two and the fact that all three of Dr. Haiman's books on free speech as well as his articles on ethics have over time been employed in the course. Portions of this paper were originally presented at the Western Speech Comunication Association Convention, February, 1985.

[1]Franklyn S. Haiman, Speech and Law in a Free Society (Chicago: The University of Chicago Press, 1981), p. 6.

[2]Franklyn S. Haiman, "Group Leadership and Democratic Action (Boston: Houghton Mifflin Company, 1951).

[3]Franklyn S. Haiman, "Concepts of Leadership," Quarterly Journal of Speech, 39 (1953), 317-322.

[4]Franklyn S. Haiman, "A Measurement of Authoritarian Attitudes toward Discussion Leadership," Quarterly Journal of Speech, 41 (1955) 140-144; "A Revised Scale for the Measurement of Open-Mindedness, Speech Monographs, 31, (1964), 97-102.

[5]Franklyn S. Haiman, "An Experimental Study of the Effects of Ethos in Public Speaking," Speech Monographs, 16 (1949), 190-202.

[6]Listed in chronological order these are "A Re-Examination of the Ethics of Persuasion," Central States Speech Journal, 3 (March, 1952), 4-9; "Democratic Ethics and the Hidden Persuaders," Quarterly Journal of Speech, 44 (1958), 385-392; "The Rhetoric of the Streets: Some Legal and Ethical Considerations," Quarterly Journal of Speech, 53 (1967), 99-114.

[7]Franklyn S. Haiman, Freedom of Speech: Issues and Cases (New York: Random House, 1965), pp. 122-123

[8]To assist the reader, where references to a single source are clear from the context the page reference will be given in the text of the article.

[9]I would argue here that Haiman is drawing a line in his use of intent that cannot be drawn in much of real world persuasion. Further, the effects of logical reason are not simply a matter of conscious activity in some kind of faculty psychology sense, but the presence of logical reasons may well operate even more importantly as psychological suggestion and yield a domination on a basis other than logical choice. See Kenneth E. Andersen, Persuasion Theory and Practice, 2nd ed. (Boston: American Press, 1983), 8-9, 137-166.

[10]Franklyn S. Haiman, Freedom of Speech (Skokie: National Textbook co., 1976) and Freedom of Speech: Issues and Cases.

[11]In his very useful review of the Haiman book, Raymond Rogers argues this is not a textbook, although useful for advanced students and capable of being used as a text by "sophisticated instructors," but concludes that in one sense that it is a "textbook on political maturity." Raymond S. Rogers, rev. of Speech and Law in a Free Society, Communication Law Review, 2 (Spring, 1984) 35 and 40.

[12]John Rawls, A Theory of Justice (Cambridge: The Belknap Press of Harvard University Press, 1971).

[13]Aristotle "Nicomachaen Ethics," W. D. Ross, trans. Introduction to Artistole, Richard McKean, ed. (New York: Modern Library, 1947), 340. The implication of this is further developed in Kenneth E. Andersen, "Communication Ethics: The Non-Participant's Role," The Southern Speech Communication Journal, 49 (1984) 224-225.